

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
BellSouth Telecommunications, Inc.)	WC Docket No. 02-304
Tariff FCC No. 1, Transmittal No. 657)	
)	

WORLDCOM OPPOSITION

WorldCom, Inc. (WorldCom) hereby submits its opposition to the Direct Case filed in the above-captioned proceeding on October 10, 2002 by BellSouth Telecommunications, Inc. (BellSouth).

I. The Proposed Tariff Language Violates Sections 201 and 202 of the Act

All suppliers of telecommunications services seek to reduce credit risk to the greatest extent possible. However, the degree to which a competitive carrier can reduce its credit risk is limited by market forces. As the carrier takes increasingly stricter measures to control its risk of nonpayment, by demanding larger security deposits or demanding such deposits from a larger population of customers, at some point the carrier's customers respond to those growing burdens by switching to competing carriers that are willing to accept higher levels of risk in order to win business. In that manner, the market balances competitive carriers' credit risk against the burdens placed on customers.

By definition, however, market forces cannot constrain the ability of a dominant carrier such as BellSouth to impose excessive burdens on customers as it seeks to reduce its

credit risk. Because dominant carriers have no concerns that an overly stringent security deposit policy could drive away customers, a dominant carrier is unlikely, in the absence of regulatory constraints, to balance the carrier's interest in reducing credit risk against the burdens placed on the carrier's customers.

On numerous occasions, the Commission has found that dominant LEC tariff terms and conditions are just and reasonable only if they reflect a similar balancing of carrier and customer interests to that found in a competitive market. For example, in considering security deposit provisions, the Commission has "recogniz[ed] that it is prudent for the telephone company to seek to avoid non-recoverable costs imposed by bad credit risks."¹ At the same time, however, the Commission has rejected "vague charges [that] could become unreasonably burdensome," provisions that "allow[ed] the telco unnecessarily broad discretion" and provisions that had "potential anticompetitive effects."²

Similarly, when considering 1987 BellSouth tariff revisions that were intended to mitigate the impact of potential customer bankruptcy, the Commission "recognize[d] that the proposed tariff revisions could reduce BellSouth's liability under the circumstances that it has described."³ At the same time, however, the Commission "believe[d] . . . that the revisions may place undue burdens on customers Provisions that more directly applied only to those customers that might default and that are supported with adequate documentation would be more reasonable."⁴

¹ Investigation of Access and Divestiture-Related Tariffs, Memorandum Opinion and Order, CC Docket No. 83-1145 Phase I, 97 FCC 2d 1082 (1984) (Phase I Order), Appendix D, discussion of Section 2.4.1(A).

² Id.

³ Annual 1987 Access Tariff Filings, Memorandum Opinion and Order, 2 FCC Rcd 280, 304-305 (1986).

⁴ Id.

As the Commission recognizes in the Designation Order, the tariff revisions proposed in BellSouth Transmittal No. 657 “significantly alter the balance between BellSouth and its interstate access customers with respect to the risks of nonpayment of interstate access bills that was struck in the early 1980s when access charges were instituted.”⁵ The Commission should reject BellSouth Transmittal No. 657 because BellSouth has failed to meet its burden of proof under Section 204 of the Act that BellSouth’s proposed security deposit policy reasonably balances BellSouth’s credit risk against customer burdens.

A. BellSouth Has Failed to Provide Information Required by the Designation Order

BellSouth has failed to meet its burden of proof because it has failed to comply with the Designation Order’s requirement that BellSouth demonstrate how each of the factors listed in the proposed tariff language “is a valid predictor of whether the carrier will pay its interstate access bill.”⁶ As a result, the Commission is unable to determine the level of credit risk that BellSouth would bear under the proposed tariff language or determine the number of customers that could potentially be the target of security deposit demands. Without this information, the Commission cannot evaluate whether Transmittal No. 657 reasonably balances the credit risk borne by BellSouth against the burdens placed on customers.

BellSouth asserts that the credit scoring methodology that it plans to use is reasonable because that methodology relies on commercial credit-scoring packages from

⁵ Designation Order at ¶ 10.

⁶ Designation Order at ¶ 15.

Moody's (RiskCalc) and Dun & Bradstreet (Risk Assessment Manager or RAM).⁷ But those credit scoring tools are proprietary "black boxes" whose workings cannot be evaluated by the Commission or the public. The "documentation" for RiskCalc and RAM that BellSouth has provided with its Direct Case consists only of users' manuals; those manuals provide the Commission with little or no information concerning the methodologies used by the credit scoring tools.

Moreover, the level of credit risk that BellSouth would bear is not determined by the credit-scoring tools standing alone. The level of credit risk that BellSouth would bear is determined by the threshold score selected by BellSouth – which, according to the Direct Case, is a score of 5 out of 10 for both the RiskCalc and RAM tools. In order to evaluate the reasonableness of BellSouth's proposed methodology, the Commission would have to know the level of credit risk that is associated with a "5 out of 10" score generated by RAM or RiskCalc. Without that information, the Commission cannot determine whether BellSouth is proposing a balanced approach that targets only those customers that present a substantial risk of nonpayment, or an unreasonably stringent approach that targets any customer that presents even the slightest risk of nonpayment.

BellSouth states only that "BellSouth's experience has been that customers who score at least five in both models are sufficiently creditworthy so as not to require a deposit."⁸ BellSouth does not, however, explain what it means by "sufficiently creditworthy," i.e., the probability of nonpayment associated with customers who score at least five in both models. Given that BellSouth's incentive is to virtually eliminate all risk, it

⁷ Direct Case at 13.

⁸ Direct Case at 14.

is likely that BellSouth would consider a customer to be “sufficiently creditworthy” only if the customer presented a minimal risk of nonpayment. But a security deposit policy that targets any customer that presents more than a minimal risk of nonpayment is not just and reasonable; firms in a competitive market could never impose such a broad-based policy.

BellSouth’s failure to comply with the Designation Order’s request that BellSouth demonstrate the predictive power of its approach is particularly noteworthy given that BellSouth claims to have based its selection of the “5 out of 10” threshold on past “experience.”⁹ Unless BellSouth provides the studies or data underlying its selection of the “5 out of 10” threshold, the Commission must find that BellSouth has failed to meet its burden of proof that its proposed credit scoring methodology is just and reasonable. It is well-established that LECs fail to meet their burden of proof if they rely only on generalized assertions of reasonableness.¹⁰

B. All Evidence Suggests that the BellSouth’s Security Deposit Policy Does Not Balance Carrier and Customer Interests

To the extent that BellSouth has provided any information about the level of credit risk that it expects to bear under the proposed methodology, that information indicates that BellSouth’s methodology does not balance carrier and customer interests, and thus is not just and reasonable.

First, data provided with BellSouth’s Direct Case shows that BellSouth’s proposed policy would capture even those customers that present little or no risk of nonpayment. BellSouth concedes in its Direct Case that BellSouth itself scores only 5.3 out of 10 with the

⁹ Id.

¹⁰ See, e.g., Investigation of Special Access Tariffs of Local Exchange Carriers, Order, 12 FCC Rcd 13677,

Risk Assessment Manager scoring tool¹¹ – only slightly above the 5.0 out of 10 threshold that triggers a security deposit request under BellSouth’s approach. Given that BellSouth, with its secure monopoly revenue streams, presents little or no credit risk to its suppliers, it is plain that an only slightly riskier customer with the trigger score of 5.0 out of 10 likewise presents little or no credit risk. BellSouth’s decision to target such low-risk customers for security deposit requests is unreasonable, and demonstrates that BellSouth has made no effort to limit its security deposit demands to those customers that present a significant risk of nonpayment. No firm operating in a competitive market could ever hope to implement such a broad-based security deposit policy; market forces prevent competitive firms from demanding security deposits from customers other than the limited number who present a substantial credit risk.

Second, BellSouth has provided no evidence that the security deposit policy created by the Commission in 1984 does not already provide BellSouth with a reasonable level of protection against bad debt. There is no merit to BellSouth’s contention that recent increases in BellSouth’s uncollectibles are, by themselves, sufficient to warrant a more stringent security deposit policy. It is perfectly normal for uncollectibles to vary depending on the point in the business cycle; as BellSouth's own data show, BellSouth’s last big increase in uncollectibles -- in 1996 and 1997 – was followed by a sharp decrease in 1998 and 1999.¹² There is no evidence that BellSouth’s existing security deposit tariff has exposed BellSouth to an increase in uncollectibles during the recent industry downturn that is unique in kind or degree. All carriers, not just BellSouth, have seen their uncollectibles

13682, ¶¶ 12-13 (1997).

¹¹ Direct Case at 14 n.17.

¹² Direct Case at 8. BellSouth’s uncollectibles rate in 2001 (1.4 percent) is only slightly higher than its

increase as the telecommunications industry downturn has deepened. Time Warner Telecom, for example, recently reported to the SEC that its uncollectibles expense has increased due to customer bankruptcies.¹³ Notably, BellSouth's Direct Case fails to respond to the Designation Order's request that BellSouth compare BellSouth's uncollectibles to those of other regulated utilities and to those of firms in the broader marketplace.¹⁴

C. Transmittal No. 657 is Potentially Discriminatory

In the Designation Order, the Commission expresses concern about whether BellSouth's proposed tariff language can be objectively administered in a nondiscriminatory manner.¹⁵ In particular, the Commission asks whether the many credit scoring factors listed in Transmittal No. 657 can be applied in a manner that will not produce arbitrary and/or discriminatory results.¹⁶

BellSouth argues, in essence, that BellSouth will apply the factors listed in the tariff in a nondiscriminatory manner by applying those factors uniformly, using commercial credit-scoring packages such as RAM and RiskCalc, to all customers.¹⁷ The Commission cannot, however, rely on BellSouth's assurances that it will implement the tariff language in a particular manner. Rather, the reasonableness of BellSouth's tariff must be evaluated based on the text of the tariff, without reference to any supplemental explanations found in BellSouth's Direct Case or elsewhere. As the Commission recently explained, "[a carrier] cannot rely on information not contained in its Tariff to make its Tariff reasonable

uncollectibles rate in 1997 (1.0 percent), the last "peak" year.

¹³ Time Warner Telecom, SEC Form 10-K, March 28, 2002, at 34.

¹⁴ Designation Order at ¶ 17.

¹⁵ Designation Order at ¶ 10.

¹⁶ Designation Order at ¶ 15.

Rather, the only relevant information is what the Tariff itself provides.”¹⁸ Where, as here, a tariff’s description of the application of a charge is vague, any other explanation provided “does not cure the deficiencies in the Tariff’s text.”¹⁹ Because the tariff language proposed in Transmittal No. 657 does little more than list a variety of factors that BellSouth may consider in evaluating credit-worthiness, and does not specify either the weighting of those factors or the threshold score for triggering a security deposit request, BellSouth’s proposed tariff language is susceptible to discriminatory and/or arbitrary application.

II. BellSouth Has Failed to Satisfy the Substantial Cause Test

A. The Security Deposit Provisions are Subject to the Substantial Cause Test

BellSouth is simply wrong when it contends that neither the security deposit provision nor any other general regulation are “part of” the long term pricing plans that BellSouth has in its interstate tariff.²⁰ Under BellSouth’s tariff, term plan customers are automatically subject to the security deposit provisions in Section 2 of BellSouth’s tariff, and would become subject to the proposed security deposit tariff language if Transmittal No. 657 were to take effect. It is irrelevant that BellSouth has elected not to specifically incorporate the security deposit provisions into the term plan sections of its tariff.

BellSouth is also wrong when it contends that the substantial cause test is inapplicable because “[t]he only commitment made by BellSouth in all of these payment

¹⁷ Direct Case at 11-12, para. 25.

¹⁸ Halprin, Temple, Goodman, and Sugrue v. MCI, Order on Reconsideration, 14 FCC Rcd 21092, 21101 ¶ 20 (1999).

¹⁹ Id.

²⁰ Direct Case at 21.

plans is to stabilize recurring rates.”²¹ The Commission has never said that the substantial cause for change test applies only when a dominant carrier’s tariff contains an explicit promise not to alter a material term or condition. In fact, the Commission has said that the substantial cause test applies even if the tariff contains a “sweeping reservation to unilaterally change any and all terms and conditions of service.”²²

Nor is there any merit to BellSouth’s contention that the security deposit provisions are not “material.” In granting AT&T’s petition to be declared a nondominant carrier, the Commission relied in part on (1) AT&T’s voluntary commitment to provide existing term plan customers with 14 days’ notice to object to changes to the discontinuance, deposit, and advance payment provisions applicable to such term plans, rather than the one day’s notice that would normally be allowed a nondominant carrier;²³ and (2) AT&T’s acknowledgement that the substantial cause test would continue to be applicable to such changes.²⁴ Plainly, tariff filings that amend the security deposit provisions of dominant carrier term plans are similarly subject to the substantial cause test.

Permitting BellSouth to make unilateral changes to the security deposit provisions applicable to term plans would be at odds with the policy basis for the substantial cause test. In the RCA Americom Decisions, the Commission stated that it “strikes us as anomalous that a carrier could use the tariff filing process to prevent any of its service terms from being enforced against it by customers, while at the same time bind customers to all the tariff

²¹ Direct Case at 22.

²² RCA American Communications, Inc., Memorandum Opinion and Order, 86 FCC 2d 1197, 1202 (1981)

²³ Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, Order, 11 FCC Rcd 3271, 3343-3344

¶ 134.

²⁴ Id.

provisions for as long as the carrier wishes”²⁵ Given that existing term plan customers are subject to substantial termination liabilities if they elect to leave BellSouth, it would be “anomalous” if those customers did not receive stability in return. Those customers made multi-year commitments to BellSouth with the expectation that they would have to pay security deposits only if they had a “proven history of late payment.”

B. BellSouth Has Not Met the Requirements of the Substantial Cause Test

BellSouth contends that it meets the substantial cause test because “BellSouth faces the concrete risk that it will suffer significant financial harm.”²⁶ But such generalized assertions of potential harm do not provide the requisite showing.²⁷ It is well established that mere reductions from anticipated revenues do not constitute substantial cause.²⁸ Rather, the carrier must demonstrate unanticipated changes in business circumstances of such degree that they would “constitute an injury to [the carrier] that outweigh[s] the existing customers’ legitimate expectation of stability.”²⁹ The Commission has, for example, suspended tariffs when the customer failed to demonstrate that “its projected losses [were] sufficiently large or certain to demonstrate ‘substantial cause.’”³⁰

BellSouth cannot demonstrate injury sufficient to outweigh existing customers’ legitimate expectation of stability. At most, BellSouth can show that it has experienced an increase in uncollectibles. But ARMIS data show that BellSouth’s uncollectibles rate for

²⁵ RCA American Communications, Inc., Memorandum Opinion and Order, 84 FCC 2d 353, 358-359 ¶ 17.

²⁶ Direct Case at 28.

²⁷ AT&T Communications Contract Tariff No. 360, Order, 11 FCC Rcd 3194, ¶ 21 (1995) (AT&T Contract No. 360 Order).

²⁸ AT&T Communications Revisions to Tariff FCC No. 2, Order, 5 FCC Rcd 6777, 6779 ¶ 21 (1990) (AT&T Tariff No. 2 Order).

²⁹ Id.

³⁰ AT&T Contract No. 360 Order at ¶ 20.

special access, which is a good proxy for BellSouth's term plan uncollectibles,³¹ was extremely low in 2001 – only 0.6 percent (\$11.4 million of BellSouth's \$1.85 billion in special access revenues).³² Consistent with the Designation Order's observation that the advance billing of special access and other term plan rates reduces BellSouth's risk,³³ the special access uncollectibles rate was less than half of BellSouth's already-low aggregate uncollectibles rate of 1.4 percent.³⁴

Moreover, BellSouth is unable to show that “it will fail to recover its costs or that net revenues [from term plan services] will become negative.”³⁵ Indeed, rate of return data show that the modest rate of uncollectibles on term plan services has caused BellSouth no injury at all. BellSouth earned an astonishing 49.3 percent on special access services in 2001,³⁶ far above BellSouth's cost of capital and the Commission's most recently-prescribed rate of return of 11.25 percent.

³¹ Special access services account for the vast majority of BellSouth's term plan revenues.

³² BellSouth ARMIS 43-01, col.s, lines 1060, 1090.

³³ Designation Order at ¶ 28.

³⁴ Designation Order at ¶ 26.

³⁵ AT&T Tariff No. 2 Order, 5 FCC Rcd at 6779, ¶ 21.

³⁶ BellSouth ARMIS 43-01, col.s, lines 1910 (total BellSouth special access average net investment of \$1.525 billion), 1915 (total BellSouth special access return of \$751 million).

III. The Arbitration Provisions are Unreasonable

In its Direct Case, BellSouth contends that the “loser pays” requirement in the arbitration provisions of Transmittal No. 657 is consistent with AAA rule R-52.³⁷ But, under AAA rules, “loser pays” is permitted only when the parties to the arbitration agree to such a distribution. Tariff language that mandates “loser pays” in situations other than where the parties agree is inconsistent with the general rule embodied in R-52, which, as BellSouth admits,³⁸ provides that the expenses will be borne equally by both parties.

Similarly without merit is BellSouth’s contention that expedited procedures would be appropriate in all instances.³⁹ Contrary to BellSouth’s contention that the issues to be decided are narrow,⁴⁰ the arbitration may in fact have to address such complex issues as whether BellSouth’s credit scoring tool and financial scoring tool are “commercially acceptable” and whether BellSouth has used those tools in a “commercially reasonable manner.”⁴¹ Such issues may not be susceptible to resolution under expedited procedures. For that reason, expedited procedures should be used only if the parties agree, as is provided for in the AAA rules.

³⁷ Direct Case at 20.

³⁸ Id.

³⁹ Direct Case at 18-19.

⁴⁰ Direct Case at 18 n.23.

⁴¹ Transmittal No. 657, proposed 6th revised page 2-21.

IV. Conclusion

For the reasons stated herein, the Commission should reject BellSouth Transmittal No. 657.

Respectfully submitted,
WORLD COM, INC.

/s/ Alan Buzacott

Alan Buzacott
1133 19th Street, N.W.
Washington, DC 20036
(202) 887-3204

October 24, 2002